

1-1 By: Perry , et al. S.B. No. 415
 1-2 (In the Senate - Filed January 5, 2017; January 30, 2017,
 1-3 read first time and referred to Committee on Health & Human
 1-4 Services; March 7, 2017, reported favorably by the following vote:
 1-5 Yeas 6, Nays 2; March 7, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9		X		
1-10	X			
1-11	X			
1-12	X			
1-13		X		
1-14	X			
1-15	X			
1-16			X	

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to a prohibition on the performance of dismemberment
 1-20 abortions; providing penalties; creating a criminal offense.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Chapter 171, Health and Safety Code, is amended
 1-23 by adding Subchapter F to read as follows:

1-24 SUBCHAPTER F. DISMEMBERMENT ABORTIONS

1-25 Sec. 171.101. DEFINITION. In this subchapter,
 1-26 "dismemberment abortion" means an abortion in which a person, with
 1-27 the purpose of causing the death of an unborn child, dismembers the
 1-28 unborn child and extracts the unborn child one piece at a time from
 1-29 the uterus through the use of clamps, grasping forceps, tongs,
 1-30 scissors, or a similar instrument that, through the convergence of
 1-31 two rigid levers, slices, crushes, or grasps, or performs any
 1-32 combination of those actions on, a piece of the unborn child's body
 1-33 to cut or rip the piece from the body. The term does not include an
 1-34 abortion that uses suction to dismember the body of an unborn child
 1-35 by sucking pieces of the unborn child into a collection
 1-36 container. The term includes a dismemberment abortion that is used
 1-37 to cause the death of an unborn child and in which suction is
 1-38 subsequently used to extract pieces of the unborn child after the
 1-39 unborn child's death.

1-40 Sec. 171.102. DISMEMBERMENT ABORTIONS PROHIBITED. (a) A
 1-41 person may not intentionally perform a dismemberment abortion
 1-42 unless the dismemberment abortion is necessary in a medical
 1-43 emergency.

1-44 (b) A woman on whom a dismemberment abortion is performed,
 1-45 an employee or agent acting under the direction of a physician who
 1-46 performs a dismemberment abortion, or a person who fills a
 1-47 prescription or provides equipment used in a dismemberment abortion
 1-48 does not violate Subsection (a).

1-49 Sec. 171.103. CRIMINAL PENALTY. (a) A person who violates
 1-50 Section 171.102 commits an offense.

1-51 (b) An offense under this section is a state jail felony.

1-52 Sec. 171.104. CONSTRUCTION OF SUBCHAPTER. (a) This
 1-53 subchapter shall be construed, as a matter of state law, to be
 1-54 enforceable to the maximum possible extent consistent with but not
 1-55 further than federal constitutional requirements, even if that
 1-56 construction is not readily apparent, as such constructions are
 1-57 authorized only to the extent necessary to save the subchapter from
 1-58 judicial invalidation. Judicial reformation of statutory language
 1-59 is explicitly authorized only to the extent necessary to save the
 1-60 statutory provision from invalidity.

1-61 (b) If any court determines that a provision of this

2-1 subchapter is unconstitutionally vague, the court shall interpret
 2-2 the provision, as a matter of state law, to avoid the vagueness
 2-3 problem and shall enforce the provision to the maximum possible
 2-4 extent. If a federal court finds any provision of this subchapter
 2-5 or its application to any person, group of persons, or
 2-6 circumstances to be unconstitutionally vague and declines to impose
 2-7 the saving construction described by this subsection, the Supreme
 2-8 Court of Texas shall provide an authoritative construction of the
 2-9 objectionable statutory provisions that avoids the constitutional
 2-10 problems while enforcing the statute's restrictions to the maximum
 2-11 possible extent and shall agree to answer any question certified
 2-12 from a federal appellate court regarding the statute.

2-13 (c) A state executive or administrative official may not
 2-14 decline to enforce this subchapter, or adopt a construction of this
 2-15 subchapter in a way that narrows its applicability, based on the
 2-16 official's own beliefs concerning the requirements of the state or
 2-17 federal constitution, unless the official is enjoined by a state or
 2-18 federal court from enforcing this subchapter.

2-19 (d) This subchapter may not be construed to:

2-20 (1) authorize the prosecution of or a cause of action
 2-21 to be brought against a woman on whom an abortion is performed or
 2-22 induced in violation of this subchapter; or

2-23 (2) create or recognize a right to abortion or a right
 2-24 to a particular method of abortion.

2-25 SECTION 2. Section 164.052(a), Occupations Code, is amended
 2-26 to read as follows:

2-27 (a) A physician or an applicant for a license to practice
 2-28 medicine commits a prohibited practice if that person:

2-29 (1) submits to the board a false or misleading
 2-30 statement, document, or certificate in an application for a
 2-31 license;

2-32 (2) presents to the board a license, certificate, or
 2-33 diploma that was illegally or fraudulently obtained;

2-34 (3) commits fraud or deception in taking or passing an
 2-35 examination;

2-36 (4) uses alcohol or drugs in an intemperate manner
 2-37 that, in the board's opinion, could endanger a patient's life;

2-38 (5) commits unprofessional or dishonorable conduct
 2-39 that is likely to deceive or defraud the public, as provided by
 2-40 Section 164.053, or injure the public;

2-41 (6) uses an advertising statement that is false,
 2-42 misleading, or deceptive;

2-43 (7) advertises professional superiority or the
 2-44 performance of professional service in a superior manner if that
 2-45 advertising is not readily subject to verification;

2-46 (8) purchases, sells, barter, or uses, or offers to
 2-47 purchase, sell, barter, or use, a medical degree, license,
 2-48 certificate, or diploma, or a transcript of a license, certificate,
 2-49 or diploma in or incident to an application to the board for a
 2-50 license to practice medicine;

2-51 (9) alters, with fraudulent intent, a medical license,
 2-52 certificate, or diploma, or a transcript of a medical license,
 2-53 certificate, or diploma;

2-54 (10) uses a medical license, certificate, or diploma,
 2-55 or a transcript of a medical license, certificate, or diploma that
 2-56 has been:

2-57 (A) fraudulently purchased or issued;

2-58 (B) counterfeited; or

2-59 (C) materially altered;

2-60 (11) impersonates or acts as proxy for another person
 2-61 in an examination required by this subtitle for a medical license;

2-62 (12) engages in conduct that subverts or attempts to
 2-63 subvert an examination process required by this subtitle for a
 2-64 medical license;

2-65 (13) impersonates a physician or permits another to
 2-66 use the person's license or certificate to practice medicine in
 2-67 this state;

2-68 (14) directly or indirectly employs a person whose
 2-69 license to practice medicine has been suspended, canceled, or

3-1 revoked;

3-2 (15) associates in the practice of medicine with a

3-3 person:

3-4 (A) whose license to practice medicine has been

3-5 suspended, canceled, or revoked; or

3-6 (B) who has been convicted of the unlawful

3-7 practice of medicine in this state or elsewhere;

3-8 (16) performs or procures a criminal abortion, aids or

3-9 abets in the procuring of a criminal abortion, attempts to perform

3-10 or procure a criminal abortion, or attempts to aid or abet the

3-11 performance or procurement of a criminal abortion;

3-12 (17) directly or indirectly aids or abets the practice

3-13 of medicine by a person, partnership, association, or corporation

3-14 that is not licensed to practice medicine by the board;

3-15 (18) performs an abortion on a woman who is pregnant

3-16 with a viable unborn child during the third trimester of the

3-17 pregnancy unless:

3-18 (A) the abortion is necessary to prevent the

3-19 death of the woman;

3-20 (B) the viable unborn child has a severe,

3-21 irreversible brain impairment; or

3-22 (C) the woman is diagnosed with a significant

3-23 likelihood of suffering imminent severe, irreversible brain damage

3-24 or imminent severe, irreversible paralysis;

3-25 (19) performs an abortion on an unemancipated minor

3-26 without the written consent of the child's parent, managing

3-27 conservator, or legal guardian or without a court order, as

3-28 provided by Section 33.003 or 33.004, Family Code, unless the

3-29 abortion is necessary due to a medical emergency, as defined by

3-30 Section 171.002, Health and Safety Code;

3-31 (20) otherwise performs an abortion on an

3-32 unemancipated minor in violation of Chapter 33, Family Code; [~~or~~]

3-33 (21) performs or induces or attempts to perform or

3-34 induce an abortion in violation of Subchapter C, Chapter 171,

3-35 Health and Safety Code; or

3-36 (22) performs a dismemberment abortion in violation of

3-37 Subchapter F, Chapter 171, Health and Safety Code.

3-38 SECTION 3. Section 164.055(b), Occupations Code, is amended

3-39 to read as follows:

3-40 (b) The sanctions provided by Subsection (a) are in addition

3-41 to any other grounds for refusal to admit persons to examination

3-42 under this subtitle or to issue a license or renew a license to

3-43 practice medicine under this subtitle. The criminal penalties

3-44 provided by Section 165.152 do not apply to a violation of Section

3-45 170.002, Health and Safety Code, or Subchapter C or F, Chapter 171,

3-46 Health and Safety Code.

3-47 SECTION 4. (a) If some or all of the provisions of this Act

3-48 are ever temporarily or permanently restrained or enjoined by

3-49 judicial order, all other provisions of Texas law regulating or

3-50 restricting abortion shall be enforced as though the restrained or

3-51 enjoined provisions had not been adopted; provided, however, that

3-52 whenever the temporary or permanent restraining order or injunction

3-53 is stayed or dissolved, or otherwise ceases to have effect, the

3-54 provisions shall have full force and effect.

3-55 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in

3-56 which in the context of determining the severability of a state

3-57 statute regulating abortion the United States Supreme Court held

3-58 that an explicit statement of legislative intent is controlling, it

3-59 is the intent of the legislature that every provision, section,

3-60 subsection, sentence, clause, phrase, or word in this Act, and

3-61 every application of the provisions in this Act, are severable from

3-62 each other. If any application of any provision in this Act to any

3-63 person, group of persons, or circumstances is found by a court to be

3-64 invalid, the remaining applications of that provision to all other

3-65 persons and circumstances shall be severed and may not be

3-66 affected. All constitutionally valid applications of this Act

3-67 shall be severed from any applications that a court finds to be

3-68 invalid, leaving the valid applications in force, because it is the

3-69 legislature's intent and priority that the valid applications be

4-1 allowed to stand alone. Even if a reviewing court finds a
4-2 provision of this Act to impose an undue burden in a large or
4-3 substantial fraction of relevant cases, the applications that do
4-4 not present an undue burden shall be severed from the remaining
4-5 provisions and shall remain in force, and shall be treated as if the
4-6 legislature had enacted a statute limited to the persons, group of
4-7 persons, or circumstances for which the statute's application does
4-8 not present an undue burden. The legislature further declares that
4-9 it would have passed this Act, and each provision, section,
4-10 subsection, sentence, clause, phrase, or word, and all
4-11 constitutional applications of this Act, irrespective of the fact
4-12 that any provision, section, subsection, sentence, clause, phrase,
4-13 or word, or applications of this Act, were to be declared
4-14 unconstitutional or to represent an undue burden.

4-15 (c) If any provision of this Act is found by any court to be
4-16 unconstitutionally vague, then the applications of that provision
4-17 that do not present constitutional vagueness problems shall be
4-18 severed and remain in force.

4-19 SECTION 5. The change in law made by this Act applies only
4-20 to an abortion performed on or after the effective date of this
4-21 Act. An abortion performed before the effective date of this Act
4-22 is governed by the law in effect on the date the abortion was
4-23 performed, and the former law is continued in effect for that
4-24 purpose.

4-25 SECTION 6. This Act takes effect immediately if it receives
4-26 a vote of two-thirds of all the members elected to each house, as
4-27 provided by Section 39, Article III, Texas Constitution. If this
4-28 Act does not receive the vote necessary for immediate effect, this
4-29 Act takes effect September 1, 2017.

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